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File No. O. Lay/42

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions under the Land Acquisition Act 1894

1.33/B

File No. O Lay/42

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R.J. No 827/42

Subm itted.

The Bhusaval Municipality proposed to acquire separate pieces of land from S.No.22 for seven different purposes. A prelim inary notification was accordingly published under sec.4(1) of the Land Acqn Act, 1894, wherein the area and the purposes for which the lands are proposed to be acquired have been specified (Vide Serial No.III in R.D.Notification No.112 dated the 13th August 1940). The total area of land thus included in the notification was 16 A - 8 G. - 0 out of S.No.22.

pp.17-18 ante.

It appears that during the proceedings held by the Collector under sec. 5A, the Bhusaval Muny m odified its original proposal and it now wishes to acquire only 3 acres of land for roads, garden, stores, privis and dharmashala. Even in the agreement executed by the Muny as required by para.80 of the Bombay Land Acqn. Manual the area of the land proposed to be acquired is stated to be 3 acres.

pp.13-14, slip P.

pp.27-30 do.

2. The question for the R.L.A's consideration is whether it is feasible to notify in a single notification issued under sec.6 of the L.A.Act the lands required for different purposes, the land required for each purpose being specified individually.

(Vide para.3 of R.D. note dated 17-12-4

pp.31-32 ante.

3. Sub- sec.(1) of sec. 6 of the L.A.Act provides that subject to the provisions of Part VII of the Act, when the Provl Govt. is satisfied after considering the report if any m ade under sec.5A(2) that any particular land is needed for a public purpose, or for a company, a decla-

ration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders. Under sub-sec.(2), the declaration shall be published in the official Gazette and shall state the District or other territorial devision in which the land is situated, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected. Sec.6(2) is mandatory and it requires that the notification should state----

(i) the district or other territorial devision in which the land is situate,

(ii) the purpose for which it is needed,

(iii) its approximate area, and

(iv) if a plan has been made, the place where it may be inspected.

A. There appears the no legal objection to embodying in a single notification issued under sec.6(2) of the Land Acquisition Act, the lands required for different public purposes provided that the details as to the district the purpose for which each land is acquired, its approximate area the place where the plan of the land if any can be inspected are clearly specified.

Id/------6/2.

U.R. to R.D.No.2099 dated 9-3-1942.

When the lands are once denotified all proceedings for acquisistion of those lands are deemed to be withdrawn. If, thereafter, the acquisition of the same lands is considered necessary, the proceedings for acquistion under the Land Acquisition Act will have to be taken de nove. The proposal made by the Collector at page 17 ante would not therefore be legally feasible.

The analogy of the orders in Government Notification No.7112/33 dated 15th August 1938 referred to in the R.D.note at page 18 ante is inapplicable to the facts of this case. The course suggested by the Commissioner, Northern Division, in para. 2 at page 16 ante may be adopted.

Id/---------2/4.

Remembrancer of Legal Affairs.

U.R. to R.D.,No.143. Confl. dated the 2nd April 1942.

Under the Land Acquisition Act, 1894, Government acquired certain land at Yeravda on behalf of the Parsee School Society for the purposes of a Public School. Under section 41 of the said Act, Government entered into two agreements with the said Society in respect of the said land. The first agreement is dated 18th November 1931 and the second agreement is dated 22nd August 1940. The Society was put in possession of the said land but no Sanad has yet been executed vesting the said land in the Society. The Society has now dropped the idea of establishing a Public School on the acquired land and proposes to relinquish the said land in favour of Government. The Government is willing to refund to the Society the money paid in respect of the said land upon certain conditions. After the said land is resumed, Government proposes to sell the same to Sir Cawasjee Jehangir.

2. The question for consideration is whether Government can give a good title to Sir Cawasjee Jehangir. Section 16 of the said Act is as follows:-

" When the Collector has made an Award under section 11 he may take possession of the land which shall thereupon vest absolutely in the Crown free from all encumbrances."

The Society does not want to carry out the purpose for which the land was acquired. The land will therefore be resumed by Governmet. It will vest in Government

free fromal encumbrances. There is no provisionin in the Land Acquisition Act that in cases in which acquired land is not required for the purposes for which it is acquired it should be returned to the original owners. A similar question had been considered by the R.L.A.in his opinion dated 25th October 1935, a copy of which is appended. In that opinion the R.L.A.held that if the purpose for which the acquisition was made has failed and cannot be carried out there is no legal objection to Government disposing of the land in any other manner. It is submitted that in this case also the purpose for which the acquisition was made has failed as the Soceity does not desire to utilise the said land for the purposes of a school. Government is therefore entitled to dispose of the said land in any way it likes.

3. The next question is whether sanction of the Court will be necessary for authorising the Society to relinquish its rights.It is submitted that the Society being a charitable institution such sanction is necessary. The Society will have to satisfy the Court why it wants to relinquish its rights. Moreover Sir Cawasjee Jehangir is himself the President of the Society and it is desirable that all the facts should be places before the Court.

4. The third question is what procedure should be followed in comleting the title. Government has not yet executed a Sanad in favour of the Society. Such a Sanad need not now be executed and all that appears necessary is that the Society should enter into an agreement relinquishing its rights to the land.

5. The Advocate General is therefore requested to advise on the following points:-

(1) Whether the Government is entitled to sell the

said land to Sir Cawasjee Jehangir.

(2) Whether the procedure mentioned above is in order.

(3) Whether an order of the Court should be obtained authorising the Society to religquish its rights.

Id/-------14/4.

Remembrancer of Legal Affairs.

U.R. to the Adv. General, Bombay, No.3248, dated 15-4-1942.

DXH

Under Section 16 of the Act the land is vested absolutely in the Crown free from all encumbrances. The purpose for which the land was acquired having failed and the land now being vested in the Crown, there would seem to be nothing in the Act which restricts the rights of the Crown as the owner of the land and which prevents the Crown from dealing with it in any manner it likes like any other owner.

2. As to the sanction of the Court to the course which the Society proposes to adopt, this will depend on the constitution of the Society. If it is withing their power under that constitution to relinquish their rights, they need not obtain the sanction of the Court. On the other hand, if they have no such power or if the proposed relinquishment is in any way contrary to its constitution, the sanction of the Court would be necessary.

3. As to the procedure, there would first have to be a document from the Society to Government by which the Society will give up whatever rights it may have in respect of the land and then a Sanad by the Government in favour of the person to whom the Government wish to grant the land.

Id/------
Advocate General
19-4-42.

(Please also see R.L.'A's U.R. to P.W.D. No.3326, dated 10-3-50- file Ol.Lag150).

A copy of the Advocate General's opinion dated 19th April 1942 together with a copy of the Statement of the Case prepared by the R.L.A. is forwarded to the Revenue Department.

Id/-------22/4

Remembrancer of Legal Affairs.

U.R. to R.D., No.3430, dated the 21st April 1942.

R.I.No. 5609/42

Submitted.

pp.5-6-ante.

The relevant facts are these-

On 24th April 1941, Mr.Fulabhai. J. Patel, Principal, Sharda High School, Anand, presented an application to the Collector of Kaira, stating that the Sharda High School has been using the adjoining land bearing S.No.2404 as the playground for the last several years, that in the absence of any other available plot, in order to comply with the instructions of the E.D. the Management of the School arranged to purchase S.No.2404 by private negotiations and requesting that as the negotations failed to achieve the object steps may be taken to acquire the said plot (S.No.2404) at the cost of the Management of the School. From the proceedings held by the Collector under section 5A of the Land Acquisition Act, 1894, it appears that ever the D.P.T. recommended to the Collector acquisti of the land. The Collector, however. informed the D.P.I. that " the land cannot be acquired for a private body unless it is a " Company" as defined in section 3(e) of the Land Acquisition Act" and he was requested to state whether the Sharda High School was a Company. It appears that the Principal Sharda High School, Anand, forwarded with his letter dated the 7th August 1941 a copy of the Certificate granted under section 3 of the Societies Registratio Act, 1860, in proof of the fact that the Sharda Education Society is a Society registered under the Societies Registration Act, 1860. The certificate of Registration was issued by the Registration 4th August 1941. It was on the strength of this certificate that the Collector of Kaira moved the Government to acquire the land. The relevant notification No.6374/39 dated the 9th October 1941

Loose papers below.

Vidop.7 ante.

p.23 ante.

under section 4(1) of the Land Acquisition Act, 1894, was published in the B.G.G. dated 16th October 1941.

2. A joint petition of objections was presented to the Collector by the owners of the ; comprised in the said notification, in which they, among others urged the following objections, namely:- Vide slip Tin Papers below (pp. 5-13)

(1) That the proposed acquisition will not serve a public purpose, as the Sharda High School is not a public body but is a private concern run with the sole object of making by its proprietors;

(2) That the Sharda High School has nothing to do with the Sharda Education Society.

From the proceedings, it appears that the objectors were heard through their pleader on 20th March 1942. At the hearing the pleader durther urged that-

(a) as the certificate produced from the Registrar of Companies regarding the incorporation of the " Sharda High School, Ltd." subsequent to the issue of the notification under section 4 of the Land Acquisition Act, it would not help the proprietors of the Sharda High School in acquiring the land; Vide slip Y in papers below

(b) the Sharda High School is a privately owned school and as it has not been transferred to the Sharda High School Ltd. the Company cannot acquire the land for the institution which is not under its control.

3. On the above facts, the questions for the R.L.A's consideration are:-

(1) Whether the prhlim inary notification No. 6374/39 dated the 9th October 1941 issued by Government under section 4 of the Land Acquisition Act, 1894, is valid; and pp. 29-31 ante.

(2) If so, whether the acquisition can be proceeded with as recommended by the Collector of Kaira and Commnr., N.D.

4. As regards the first question it is no doubt

doubt true that when on 24th April 1941 Mr. Fulabhai J.Patel presented an application to the Collector of Kaira for acquisition of the land in question, he did so in his individual capacity as the Principal, Sharda High School, Anand and not as a President Chairman or Principal Secretary or as a person appointed by the governing body of the Sharda Education Society, Anand, The Sharda Education Society, Anand, came into being on 4th August 1941 when it was registered as a Society under section 3 of the Societies Registration Act, 1860. From the proceedings held by the Collector of Kaira, however, it is evident that it was on the strength of the registration certificate forwarded by Mr. F.J.Patel with his letter dated the 7th August 1941, that the Collector moved the Government for acquisition of the land for the Society. In para 2 of his endorsement No.L.A.Q.338 dated the 20th September 1941 recommending acquisition of the land the Collector stated that the Sharda High School, Anand, (What he meant was the Sharda Education Society,Anand) was registered under Societies Registration Act, 1860, and it was, therefore, a Company within the meaning of section 3(e) of the Land Acquisition Act, 1894. The Notification dated the 9th October issued by Govt.under section 4(1) of the Land Acquisition Act, 1894, specifies the purpose for which the land is likely to be needed, but it does not state whether the land was required for a public purpose or for the purposes of any Company. The Notification is not quite in accordance with the form prescribed in para 30 of the manual of Land Acquisition. Section 4(1) provides that whenever it appears to the Provincial Government that land in any locality is needed or likely to

Vide A at p.3 of the proceedings

pp.1-3ante.

p.23ante

be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality." Section 5A(1) provides that any person interested in any land which has been notified under section 4(1) as being needed or likely to be needed for a public purposes or for a Company, may, within thirty days after the issue of the notification. object to the acquisition of the land or of any land in the locality as the case may be. .The combined effect of section 4(1) and 5-A(1) is that the notification under section 4(1)should specify, whether the land is needed or likely to be needed for a public purpose or for a company . In the present case the purpose of requisition is specified but it is not stated in the notification that it is required for a company. This emission, however appears to be not merely an irregularity and non-compliance of the provisions would vitiate the proceedings. In the Memorandum of Association of the Sharda Education Society there is nothing to show that the Society was either the owner of the Sharda High School or that it was competent to to run or take mamagement of that School. That being, so, it is doubtful if the land could at all be acquired for the Secfety. The Notification is not therefore, valid.

cf.57 Cal.p.837at840

pp.23-25 of leese papers.

5. The view expressed by the R.D.that the land cannot be acquired on behalf of private bodies unless they are "Companies" with the meaning of section 3(e) does not appear to be quite correct. The words "Wholly or partly out of public revenue etc" in the proviso to section 6(1) justify acquisition of lands for privately managed institutions of public utility such as schools or hospitals when a portion or the cost is borne by a grant fromn Gevernment

Acquisition for a public purpose is different from acquisition for a company see Section4(1)and 68(2).

or local authority. The acquisition in such cases is treated as made at the instance of Government or the local authority, as the case may be, and not as an acquistion at the instance of a company(vide p.48 of Gupta's Land Compensation Acts.). It has been held in Sanja Naiekan vs. Secretary of State(ILR.50 Mad 308) that even a contirbution of one anna for acquisition of land for a public purpose satisfies the proviso to section 6(1) In this connection attention is invited to R.L.A's opinion Ni.1157 Confl. dated the 29th October 1937(p.125 of Vol.O.Laq/1936-40). Where, however, the whole of the compensation money is payable by a private body the acquisition proceedings will be illigal. So assuming that the acquisition was not for the Sharda Education Society it cannot be said that the notification was invalid, merely because land was proposed to be acquired for a private institution, such as a school.

6. As regards the second question it is ture that the land was ament ot be acquired for the Society known as " the Sharda Education Society, Anand" a body registered under section 3 of the Societies Registration Act, 1860. It is presumed that the Society has been dissolved under section 13 of that Act. There appears nothing in the Memorandum and Articles of Association of the Sharda High School, Ltd., incorporated under the Indian Companies Act, 1913, to indicate that it is a successor of the Sharda Education Society which presumably has been dissolved and has, therefore, ceased to exist. If the Society, on whose behalf the acquisition proceedings

The Sharda High School Ltd.has been separately registered. It cannot be a successor of the Sharda Education Society.

were undertaken ceased to exist, the result will be that the proceedings would automatically terminate. Even the Agreemet executed by the Sharda High School Ltd. does not indicate that the Co.is a successor of the Society. From the memorandum and Articles of Assocaition of the Sharda High School, Ltd. It is clear that the objects of the Co.are quite different from those for which the Sharda Education Society was constituted. It is therefore clear that the Sharda High School.Ltd. is entirely a separate and distinct body from the Sharda Education Society and the former does not appear to be a successor of the latter. Consequently, the recitals made in para. 3 and 4 of the Agreemment under section 41 that the Co. applied to the Govt. of Bombay for acquisition of certain lands etc, do not appear to be correct. In view of the above discussion the only feasible course appears to be that thenotification Notification dated the 9th October 1941 should be cancelled and the Sharda High School Ltd. to which the Sharda High School has been transferred may be asked to apply afresh for the acquisition of the land in question.

p.p.104-105 of loose papers below.

DYR

Office of the R.L.A.

The Revenue Department's view that the preliminary notification under section 4 is invalid, is correct.

Id/--- 15/7.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 5941, dated the 17th July 1942.

Submitted.

The facts as recorded by the District Deputy Collector, N.D.Ratnagiri, in his endorsement No. D.R.1141 dated 16th November 1941 are as follows:-

The applicant Mr.Mir.Mardia Baba Taryo, plies a private ferry on the Vashisti river between Chiplun and Valope. The applicant asserts that he and his family has the exclusive right of plying the ferry accross the river Vashisti, and that this right chis right has been conferred upon his family by a Royal grant from pre-British times and that this right has been recognised by the British Govt.It appears that the ferry is being plied only for four months during the monsoon. From the documentary evidence produced by the applicant the D.D.C.has found that the applicants family enjoyed the monopoly of plying the ferry across the river Vashisti and that this right was also recognised by Government. The applicant contends that as a result of the construction of the bridge by Government over the river Vashisti near Chiplun, his business of plying the ferry is adversely affected and the income accruing therefromhas been materially deminished. He, therefore urges that he should be compensated for the loss of easement rights over the banks either under the section 23(fourthly) of the Land Acquisition Act, 1894, or in the alternative he should be compensated for the tortuous act of Covernment as a result of which he has been made to suffer loss of income from the business of plying the ferry. The D.G.P.Ratnagiri, who was consulted by the Collr. is of opinion that the applic ant has legally no claim against Govt. The papers are, however, referred to the R.L.A. for his advice whether the view taken by the D.G.P.is correct.

2. As regards the claim for the loss of easem ent

rights, under section 23(fourthly) of the Land Acquisition Act, 1894, it may be pointed out that the land ~~Acquisition~~ which is used for embarking and disembarking passengers from ferry is in village Valope opposite to Chiplun situated about three-fourths mile away from the place where the bridge has been constructed(vide para 6 of D.D.C's endorsement). This fact has even been admitted by the applicant's pleader at A of p.107. It is, therefore, evident that the place used by the applicant for embarking and disembarking passengers has not been acquired. Section 23(1)of the Land Acquisition Act, 1894, provides that in determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration while determining the compensation for the land acquired, the damage, if any, sustained by the person interested, at the time of Collr's taking possession of the land by reason of acquisition injuriously affecting his other property movable or immovable, in any other manner or his earnings. As stated above, since the land used as landing place for the ferry has not been acquired section 23 will have no application. No. question of damage to any other property of the petitioner would arise and even the claim for loss of income would not be tenable. I Rameswar Singh v. Secretary of State for India(I.L.R.34 Cal.p.470 at p.487) the Calcutta High Court has exhaustively considered the question and the following remarks are pertinent:- p.114ante

" It appears to be quite clear that no damage can be claimed on account of losses sustained by reason of the construction of the Railway bridge; for instance, if the Railway Co. had not acquired the landsas landing places for the ferry, but had merely constructed a bridge across the river, as a result of which, the traffic/ over the ferry was dininished, no damage could be claimed, not at any rate, unless it was established that the ferry owner had an exclusive franchise, that is, an exclusive right to carry passengers and goods across the river. In other words the taking of property, that merely injures a franchise, but does not interfere with the exercise of it, it is not such a taking of property from the owners of the franchise

ranchise, as to require compensation. Regerence may be made in this connection to the case of Hopkins vs. Great Northern Railway Co(1877) 2 Q.B.D. 224 in which it was held that the owner of a ferry cannot maintain an action for loss of traffic, caused by a new highway by bridge or ferry made to provide for new traffic. In that case, the owner of the ferry franchise unsuccessfully claimed compensation for loss of profits, caused by a rail- road built across the stream. The same view was taken in the case of Moses V. Samform and Hydes Ferry vs. Davidson County. In the former of these dases, it was held that the profits of the ferry franchise has been affected but not by acquisition of the land over which the bridge for travel across the river. The case is, however, different where the land which is used as the landing place for the ferry is acquired. In such case, the access to the river and with it the exercise of the franchise, is destroyed and consequently is payable: See Collr. of Dinagepore vs. Cirjanath Roy(IL.R. 25 Cal 546) and Reg v.Great Northern Railway Co.(1849)14 Q.B.D.25) In other words where the ferry landing and the ferry franchise remain precisely as before, though the profits are liable to be depreciated by the new mode of travel legitimately created, no compensation can be claimed; but where by reason of the acquisition itself the exercise of the franchise or the use of property pertaining to the franchise is interfered with, damages can be rightly claimed. "

In view of these observations, since in the case under consideration as the landing place for the ferry has not been acquired the franchise to ply the ferry is not affected. and consequently the claimant would not be entitled to payment any compensation from Government

3. Regarding the alternative relief, claiming damages on account of diminution in the applicant's income from the

ferry, it may be stated that : "it is disturbance of the rights of a ferry owner for another person to set up a ferry so near to his that his profits are diminished. But the ferry-owenr's rights are commmensurate with his obligations a and as he is obliged to carry across water by ferry only, it is no disturbance of his rights if another erects a bridge and so diminishes or destroys the ferry-owner's profits(Dibden v. Skirrow (1907) 1Ch.p.437 affirmed in appeal (1908) 1 Ch. p.41); Hammerton v. Earl of Dysort (1916)1 A.C.p.57); and it seeams that the ferry owner cannot maintain an action for distrubance if the traffic carried by the person of whose acts he comnplains is a new and different kind of traffic, for which the convenience of the public requires a new passage" (para 41 at pp.29-30 of Halsburry's Laws of England Vol.15). In an action for disturbance of a ferry, a defendant may show that his ferry was set up to accommnodate a new and different kind of traffic or that there has been a change or circumstances creating new highways on land which would carry with it a right to continue these across the water, or that the public x cannot be served by the old ferry, or that he carries his traffic to a vill different fromthat to which the ferry owner carries his (Ibidp.32 para 44). Fromthe above authorities and fromthe ruling in 34 Cal. p.470, it will be clear that the applicant has no right claimagainst Government for the loss of incomefromb ferry arising on account of construction of a new bridge.

4. The view taken by the D.C.P.Ratnagiri, is correct. If approved the papers may be "seen and returned".

Id/-----

I agree. Reply may be:-

Papers are seen and returned. The view taken by the D.C.P.Ratnagiri is correct.The Ferry-owner can have no valid claimnagainst Govt. for compensation.

Mr. Bhamgare's note is good.

I agree
Reply may be suggested by A.S.

I agree. The law on the subject is quite clear the ferry owner can have no claims against Govt. for compensation. Reply as suggested by A.S.

Id/-----17/7

U.R. to P.W.D.No.5933 dated 21-7-42.

No.6079.

Office of the
Remembrancer of Legal Affairs.

Bombay Castle, 25th July 1942.

From

P.N.Mees, Esquire, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs;

To

The Collector,
Bombay Suburban District.

Subject:- Acquisition of lands for purposes connected with the defence of British India in the Bombay Suburban District.

Sir,

With reference to your endorsement No.L.A.Q/51, dated the 21st July 1942, below letter of even No. and date from the Special Land Acquisition Officer for Bombay City and the Bombay Suburban District, on the above subject, I have the hounour to observe as follows:-

The question raised for my consideration is whether section 9(2) of the Land Acquisition Act, 1894 requires that the lands must be described by mentioning their boundaries. Sub-section (1) of section 9 of the Land Acquisition Act, 1894, rquires the Collector to cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land. Sub-section (2) provides inter alia that such notice shall state the " particulars" of the land so needed. The Act does not state what particulars are to be given. In Rameshwar Singh vs. Secretary of State, I.L.R.34 Cal.470 it has been held that a notice under this section ought to be precise and ought to give information sufficient to identify the land. The law does not require that the land should be described by mentioning the boundaries. Whether the land can be adequately described by omitting references to its boundaries would largely be a question offact. If it is reasonable possible to identify the land merely by its S.No, Hissa No.and situation, then there would be no legal objection to omitting other particulars such

as the boundaries. The object of the notice is that no person interested should be misled as to the indentity of land proposed to be acquired (Please see in this connection para 4. of R.L.A's opinion No.O.Laq.11/29, dated 6th November 1929)

The form of general notice under section 9 prescribed by Government (at p.43 of the Land Acquisition Manual) requires that the boundaries of the land should be mentioned. This form is no doubt prescribed by Governmat by an executive order and has no statutory force; but the instructions contained in the Land Acquisition Manual issued by Government are Departmentally binding upon all subordinate officers. (See p.1 of the Manual). Throughout the proceedings under the Land Acquisition Act the Collector acts as the agent of Government and consequently he is required to act in conformity with the instructions contained in the Land Acquisition Manual (see 30 Cal. 36at pages 82-85 and 88), It appears, therefore, necessary for the Special Land Acquisition Officer to obtain the permission of Governmat in these cases to omit the boundaries in the notice if the same are not in fact necessary for the proper identification of the land to beacquired.

Your Obedient Servant,

Sd/--------25/7.

Remembrancer of Legal Affairs.

Submitted.

2. The facts of the case are given in the Chronological Statement of Facts of B.S.D.Civil Suit No.227 of 1940,. They are briefly as follows:-

3. In 1921 Government acquired 4 acres of land in S.No.173 of Vile Parle. The acquiring officer held that out of the 4 acres 2 acres 14 gunthas and 8 as belonged to one Haji Umar and the rest to the Khot. The khot was held not to be entitled any compensation under clause 16 of the Kowl and the acquiring officer held that Haji Umar was entitled to compensation at the rate of Rs.1 as.4 per square yard for 1 g.-12as.of land only. Haji Umar made a reference to the District Court and he was awarded compensation at the rate of Re.1/4 per sq.yd. for 2 acres 14½ gunthas of land. This decision was confirmed in appeal by the High Court. This 2 acres 14½ gunthas of land was the land purchased by Haji Umar in 1911 from the khots. Afterwards it transpired that land admeasuring 1 acre 5½ gunthas which was purchased by Haji Umar by a sale deed of 1910 was also acquired and was included in the 4 acres. Presumably Haji Umar was not aware of this when he claimed compensation. The land was however continued in the possession of his heirs. The 4 acres of land acquired by Govt. was given a separate S.No.173-B and the remaining land measuring 2 acres 31½ gunthas was shown in the name of the Khot. On the application of the Jusab son of Haji Umar changes were made in the Record of Rights and area of 1 acre 17½ gunthas was entered in this name in 1928. The khot protested against this and in 1934 the Collector B.S.D. directed that the land should be entered in the Khot's name. An appeal was preferred to the Commr. who referred the matter for Governments orders, Govt. consulted the R.L.A. In R.L.A's opinion

No.9246 dated the 15-12-38, it was held that Hawabai the widow of Jusab Haji Umar who purchased the disputed 1 acre 5½ gunthas from her husband was not entitled either in law or equity to any compensation Other land including this 4 acres of land was taken up by the Govt. of India from the Govt. of Bombay for the Juhu aerodrome and it was decided that she was not entitled to any portion of the compensation which the Govt. of India would pay to this Govt. Her appeal to the B.R.T. was also dismissed for want of jurisdiction. She then filed C.S.No.227, of 1940 in the Thana Court but that suit was also dismissed. She has now made a fresh petition to Govt. In that connection A(R) states that the law is clear on the point but he is not clear about the equity. In his view Haji Umar was the victim of genuine mistake, The R.L.A. is requested to see the papers in view of his previous opinion on the question of equity.

4. The question for consideration is whether equity requires that some reasonable compensation may be given to Hawabai the widow of Jusab Haji Umar.

5. It appears that there was a genuine mistake in this case on the part of both Haji Umar and the acquiring officer.The acquiring officer held that area measuring 2 acres 14 gunthas 8 as, belonged to Haji Umar and 1 acre 25gs. and 8as. belonged to the khot. (pl.see A at p.187 of L.D.Vol.O.LAQ.36-40). (The papers containing acquisition proceedings are not among these papers and in their absence it is difficult to decide the point) The same view was taken by the A.S. in his note dated 8-12-38 underlying the R.L.A's opinion mentioned above . (See B at p.185 ibid).R.L.A., however relied upon a letter addressed to the Asstt. Development efficer dated 24-1-23 by Haji Umar's pleader in which he sated that his client was entitled to compensation for an area of 3 acres and 38½ gunthas. It is not known how this area was arrived at. In the sale deeds, the land is shown as measuring 3 acres-20 gunthas and 4as and in the Record of Rights 3 acres 31 gunthas-12as. If however, Haji Umar was aware of the fact that his land comprised in the sale deed of 1910 was included in the land notified for acquisition, he would have claimed compensation for it, as he made a reference to the Dist. Court, for the other land. It is no doubt true that Haji Umar was negligent to a certain extent but it

true, that Haji Umar was negligent to a certain extent but it seems. It seems that it was a bona fide mistake. It is admitted in the Commissioner's letter at p.1 ante that the sketch was faulty and did not correctly represent the area in possession of Haji Umar and the khot. The person who prepared the sketch drew an imaginary line from northern to south and noted the areas thereon without ascertaining to whom they belonged. The land also remained in the possession of the heirs of Haji Umar for a considerable time after acquisition, which is also one of the circumstances to show that Govt.Officers also made a bona fide mistake. If the Government of Bombay had not received any compensation, no compensation even in equity would have been payable to Bai Hawabai but as Government has received compensation for the land from the Government of India it would be equitable to pay some reabonable compensation to the petitioner.

Id/---S.R.P.
22/8.
A.S.

I agree: reply may be:-

Papers are seen and returned. On further consideration the R.L.A. agrees that there is equity in favour of Bai Hawabai.

R.T.K.
26/8.

I agree

Reply may be:-

On the facts as stated by A(R) at p.169 & 170 the R.L.A.agrees that equity requires the payment of reasonable compensation to the applicant.

R.L.A.

This is I think a clear case for granting equitable compensation. Reply in terms of A.L.R.'s note. P.N.M 31/8

DYR